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SERVICE DATE – DECEMBER 17, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 208X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN  
MARSHALL COUNTY, KS

Decided: December 16, 2004

By decision and notice of interim trail use or abandonment (NITU) served on December 17, 2003, a 180-day period was authorized for Union Pacific Railroad Company (UP) to negotiate an interim trail use/rail banking agreement with the Nebraska Trails Foundation, Inc. (NTF) for a 8.13-mile line of railroad from milepost 133.13 near Marysville to milepost 125.00 near Marietta, in Marshall County, KS. The negotiating period under the NITU was scheduled to expire on June 15, 2004, but was extended to December 12, 2004, by decision served June 21, 2004.

On December 13, 2004, NTF filed a request for an additional 90-day extension of the negotiating period until March 12, 2005. NTF states that the additional time is needed due to ongoing negotiations with UP. In a response filed December 14, 2004, UP states that it is agreeable to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended for an additional 90 days from December 12, 2004 (until March 12, 2005).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NTF's request to extend the NITU negotiating period is granted.

2. The negotiating period under the NITU is extended to March 12, 2005.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary